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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

DAMON ANTHONY TYLER,

Defendant and Appellant.

A123161

(Solano County  
Super. Ct. Nos. FCR241142,  
FCR243763, FCR251420)

Defendant Damon Anthony Tyler was on probation for evading a police officer and possession of cocaine when he committed a robbery. Following the revocation of his probation and conviction for the robbery, the court imposed consecutive sentences for the robbery and for the two prior offenses for which imposition of sentence had previously been suspended. Although receiving a total sentence of 19 years and four months, defendant challenges only the imposition of consecutive eight-month sentences for the two prior convictions, contending that the court did so based on a factual misunderstanding that the two prior convictions arose out of separate cases when in fact the two offenses occurred at the same time and place and were prosecuted in the same action. We disagree that there was any error and shall affirm.

**FACTUAL AND PROCEDURAL HISTORY**

At the time of the robbery, defendant was on probation in Solano County, action No. FCR241142, for two offenses that occurred in March 2007. In that case, the police had responded to a dispatch indicating that an unknown man was sitting in the victim's

vehicle. When police arrived, the vehicle was parked at a Shell station. As the car left the gas station, an officer in the patrol car activated his lights to make a traffic stop.

Defendant, who was driving the vehicle, accelerated and lead police on a 10 and half-mile chase, driving at a high speed and ignoring red lights and double yellow lines. When defendant crashed the vehicle, he fled on foot. With the aid of a police canine, and following a struggle, defendant was apprehended and subdued. A search of defendant revealed two bags containing .93 grams of cocaine, and a records search revealed a suspended drivers license. Defendant later stated he had intended to steal something from the victim's car. He told police the reason he fled was for "the thrill, and for the fun of it."

Defendant ultimately plead guilty in action No. FCR241142 to evading a police officer with willful disregard for the safety of persons and property (Veh. Code, § 2800.2, subd. (a)), possession of cocaine (Health & Saf. Code, § 11350, subd. (a), and driving under the influence of alcohol or drugs (Veh. Code, § 23152, subd. (a)). The court suspended imposition of sentence and placed defendant on three years' probation.

While in county jail awaiting sentencing on the March 2007 offenses, defendant got into a physical altercation with a correctional officer and in action No. FCR243763 plead no contest to battery on a custodial officer. (Pen. Code, § 243.1.) The court also suspended imposition of sentence on this offense when placing defendant on probation for three years.

In January 2008, while on probation for the prior offenses, defendant robbed two victims at a Subway sandwich shop. In No. FCR251420, defendant was convicted in a jury trial of two counts of second degree armed robbery (Pen. Code, §§ 211, 12022.5, subd. (a), 12022.53, subd. (b)), two counts of dissuading a witness by force or threat (Pen. Code, § 136.1, subd. (c)(1)), and possession of a firearm by a felon (Pen. Code, § 12021, subd. (a)(1)), with a finding that defendant personally used a firearm (Pen. Code, § 667.5, subd. (c)(8)).

The court sentenced defendant to a base term of three years on one robbery count, with a consecutive 10-year sentence for the use of a firearm. It imposed a one-year consecutive term on the second robbery count, plus three years four months for the use of a firearm. Sentences on the other counts in No. FCR251420 were stayed pursuant to Penal Code section 654. The court then imposed three consecutive eight-month sentences, one for each of the two offenses in No. FCR241142 (evading the police and possession of a controlled substance), and one in No. FCR243763 (battery of a custodial officer). The aggregate prison term is 19 years and four months. Defendant filed a timely notice of appeal.

### **DISCUSSION**

In considering a consecutive sentencing determination, this court ordinarily reviews for an abuse of discretion. (*People v. Caesar* (167 Cal.App.4th 1050, 1059.) If a trial court fails to articulate proper reasons for imposing a consecutive sentence, “we are to reverse the sentence only if ‘it is reasonably probable that a result more favorable to the [defendant] would have been reached in the absence of the error.’” (*People v. Watson* (1956) 46 Cal.2d 818, 836.)” (*People v. Sanchez* (1994) 23 Cal.App.4th 1680, 1684.)

The only portion of the sentence that defendant challenges is the imposition of sentences consecutive to each other in No. FCR241142 for evading the police and possession of a controlled substance. In imposing the three consecutive eight month terms after it had announced the sentences for the robbery counts, the court stated that defendant “has two other cases that he’s on probation for: FCR241142, and that’s a Vehicle Code violation 2800.2 and [Health and Safety Code, §] 11350(a). That case, I’ll give him – I’ll impose, one, those are different cases, different times, victims; I’ll impose eight months, one-third the midterm, consecutive on each count to 251420, for a total of 16 months. . . . [a]nd finally, in case 243763, that is, one count of Penal Code violation 243.1, we’ll impose one-third the midterm of eight months consecutive, again to both of the other cases.” Defendant argues, “The only reason the court offered for that sentencing choice [consecutive sentences for each of the two counts in No. FCR241142] — ‘those

are different cases, different times, different victims’ — reflects a factual misunderstanding of the two counts, which actually involved the same case, the same times, and the same ostensible victims.”

Whatever uncertainty there may have been in the court’s language, defendant waived any possible error by failing to make a timely objection. Any ambiguity in the court’s explanation could easily have been clarified had the uncertainty been mentioned. The requirement that such issues be raised at the time of sentencing “encourage[s] prompt detection and correction of error.” (*People v. Scott* (1994) 9 Cal.4th 331, 351.) There was no ineffective assistance of counsel, as defendant also suggests, because the court’s meaning was perfectly plain, calling for no objection, and even if the court misspoke, there unquestionably was no prejudice. (*Strickland v. Washington* (1984) 466 U.S. 668, 693.)

While the court’s comment can be construed to indicate that the convictions for evading the police and possession of drugs arose in different cases, in context it is apparent that the court either meant to refer to different “counts” rather than “cases,” or that it was referring to the two cases, No. FCR241142 and No. FCR243763. In all events it is clear that the court correctly understood that defendant had been convicted of two offenses, evading the police and possession of a controlled substance.

Even if one assumes that the trial court mistakenly understood that those two offenses were prosecuted in separate cases, the misunderstanding was harmless. (*People v. Watson, supra*, 46 Cal.2d at p. 836.) There is no reason to believe that the court would have imposed concurrent rather than consecutive sentences for the two offenses because they were charged in one rather than two separate cases. And contrary to defendant’s contention, the two offenses did not involve the same victim, the “people of the State of California,” except at the most abstract level.

Defendant mistakenly suggests this case is analogous to *In re Bartges* (1955) 44 Cal.2d 241. In *Bartges*, the court reviewed a sentence that was erroneously based on a belief that the defendant had been convicted of larceny and larceny by bailee when in fact

those convictions had been dismissed by the prosecutor. The court observed that “it cannot be said that the trial court’s unwarranted determination as to the number of prior convictions of felony did not influence it in sentencing petitioner to consecutive rather than concurrent terms.” (*Id.* at p. 247.) Here, in contrast, there was no similar misunderstanding as to the number or nature of offenses for which defendant was convicted. Defendant plead guilty to both evading the police and possessing illegal drugs, as the court correctly understood.

Nor is there any basis to suggest that Penal Code section 654, which prohibits multiple punishments for offenses with the same objective, has any application here. Section 654 does not preclude separate punishment for the commission of offenses with different criminal objectives that are independent of each other but carried out as part of a single course of conduct. (*People v. Perry* (2007) 154 Cal.App.4th 1521, 1525). Defendant’s offenses were predominantly independent and not committed as a means of facilitating each other. (*People v. Jones* (2002) 103 Cal.App.4th 1139, 1143.) Defendant argues that he evaded the police because he possessed cocaine. Nonetheless, neither offense was necessary for the accomplishment of the other, and the attempt to avoid apprehension was not for the purpose of possessing the contraband. Moreover, defendant stated at the time of his apprehension that his reason for evading the police was for “the thrill of it.”

The defendant’s remaining contention that he was denied due process is similarly unpersuasive. Due process does not require a perfect trial, only a fair one. (*In re Pratt* (1980) 112 Cal.App.3d 795, 885.) We do not believe there was any misunderstanding on the court’s part, but even if the court was confused concerning the particular cases in which the defendant’s multiple offenses were committed, there was neither prejudice nor unfairness in the proceedings.

## **DISPOSITION**

The judgment is affirmed.

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Pollak, J.

We concur:

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McGuiness, P. J.

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Siggins, J.